

Definition of Investment

Bill Proposal:

Amend the definition of “investment” to specifically exclude defined benefit pension plans (i.e., PERS, STRS, 1937 Act plans, etc.).

Problem and Proposed Solution:

In a 1978 opinion (*Elmore* opinion (4 FPPC 8)), the Commission held that employee payments made to defined benefit pension plans are not “investments.” This bill would amend Government Code section 82034 to codify the *Elmore* opinion to expressly exclude defined benefit pension plans from the definition of “investment.”

Bill Language:

§ 82034. Investment.

“Investment” means any financial interest in or security issued by a business entity, including but not limited to common stock, preferred stock, rights, warrants, options, debt instruments and any partnership or other ownership interest owned directly, indirectly or beneficially by the public official, or other filer, or his or her immediate family, if the business entity or any parent, subsidiary or otherwise related business entity has an interest in real property in the jurisdiction, or does business or plans to do business in the jurisdiction, or has done business within the jurisdiction at any time during the two years prior to the time any statement or other action is required under this title. No asset shall be deemed an investment unless its fair market value equals or exceeds two thousand dollars (\$2,000). The term “investment” does not include a time or demand deposit in a financial institution, shares in a credit union, any insurance policy, interest in a diversified mutual fund registered with the Securities and Exchange Commission under the Investment Company Act of 1940 or a common trust fund which is created pursuant to Section 1564 of the Financial Code, interest in a defined benefit pension plan qualified under Internal Revenue Code Section 401(a), or any bond or other debt instrument issued by any government or government agency. Investments of an individual includes a pro rata share of investments of any business entity, mutual fund, or trust in which the individual or immediate family owns, directly, indirectly or beneficially, a 10-percent interest or greater. The term “parent, subsidiary or otherwise related business entity” shall be specifically defined by regulations of the Commission.